

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11CV671

FIFTH THIRD BANK,)
An Ohio banking corporation, successor by)
merger with Fifth Third Bank, a Michigan)
banking corporation,)
)
Plaintiff,)
)
vs.)
)
WALTER W. RECTOR and SHIRLEY B.)
RECTOR,)
)
Defendants.)
_____)

ORDER

This matter is before the Court upon Plaintiff's Motion for Summary Judgment. This is a suit to enforce a Guaranty agreement signed by the Defendants. Defendants have responded and do not contest their liability under the Guaranty. The only issue that Defendants contend is in dispute is the amount due and owing under the Guaranty. Defendants contend that Plaintiff has failed to establish that the interest rates applied are tied to the LIBOR rate, as provided in the Guaranty, and how application of the interest rate results in the total amount of interest Plaintiff claims is due but unpaid through June 19, 2012. In response to Defendants' argument, Plaintiff has submitted the Affidavit of Peter Freiermuth, a Fifth Third employee, along with exhibits that provide a detailed accounting of the accrued but unpaid interest for the applicable time period. Mr. Freiermuth's Affidavit explains in detail the process of calculation of the interest rate and the application of the rate to the principal balance due. Based upon this evidence, the Court concludes that there are no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law. Accordingly,

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment is hereby GRANTED, and judgment is hereby entered against Defendants Walter W. Rector and Shirley B. Rector, jointly and severally, for the indebtedness under the Guaranty in an amount equal to: (i) \$12,569,791.22, which is 50% of the principal amount of the Note, plus (ii) all of the accrued but unpaid interest in the amount of \$2,386,430.45 up to and including June 19, 2012 and interest thereafter at the non-default rate of \$2,613.64 per day until the outstanding obligation is paid in full, plus (iii) all of the costs and expenses incurred by Fifth Third in enforcing the Guaranty.

Signed: October 11, 2012

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

